

U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JUN 14 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Myra S. Rosen
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed on March 12, 2001. Part 1 of the Form I-360 indicates that St. Joseph High School, Victoria, Texas, is the petitioner. The petition, however, is signed by [REDACTED]. Therefore, St. Joseph High School cannot be considered as having filed the petition on behalf of [REDACTED]. [REDACTED] will be considered the petitioner.¹ St Joseph High School is the petitioner's current and prospective employing organization.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to perform services for St. Joseph High School as a religious teacher in grades nine through twelve. The acting director denied the petition on multiple grounds in a decision dated August 21, 2002. Specifically, the director determined that the petitioner had not established that: (1) the employing organization has extended a qualifying job offer to the petitioner; (2) the proposed position constitutes a qualifying religious vocation or occupation; and, (3) the employing organization qualifies as a bona fide non-profit religious organization.

The Form I-290B, Notice of Appeal, was filed by counsel of the petitioner on September 6, 2002. On appeal, counsel for the petitioner submits a brief and additional documentation. Counsel asserts that the petitioner has submitted sufficient evidence to establish that the proposed position is permanent in nature, that the proposed position qualifies as a religious occupation requiring religious training, and that the employing organization qualifies as a bona fide non-profit religious organization.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States--
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

¹ It is noted that the acting director did not recognize that Mr. Legaspi had signed the petitioner and addressed all correspondence in the matter to the employing organization through counsel.

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petitioner's current and prospective employing organization is described as a private Catholic high school affiliated with the Diocese of Victoria, Texas, a member of the Catholic Church with headquarters in Rome, Italy. The employing organization's principal, Sister Emilie Eilers, states that the school is accredited by the Texas Catholic Education Department and approved by the Texas Education Agency (TEA).

The petitioner is a native and citizen of the Philippines who was last admitted to the United States as a nonimmigrant religious worker (R-1) on July 16, 1997, with authorization to remain until August 14, 2001. There is no indication in the record that the petitioner has applied for or been granted an extension of his authorized period of admission.

Prior to his entry into the United States, the petitioner served as a catechist/Sunday school teacher at the Sacred Heart Shrine in La Calota City, Philippines, from 1988 to 1992. From 1995 to 1997, the beneficiary served that organization as a religion teacher. Documentation contained in the record reflects that the petitioner attended the University of St. La Salle in Bacolod City, Philippines from 1986-1988; completed a correspondence course in "You and Your Creator" in 1992; and completed a "Provisional Secondary Certificate (Biology)" from the Texas A&M International University System in 1995. There is no evidence contained in the record that the petitioner has a U.S. baccalaureate degree or a foreign equivalent degree. The petitioner has been employed by St. Joseph High School, under one-year non-renewable contracts from 1998 through 2001 (four school years).

In order to establish eligibility for classification as a special immigrant religious worker, a petitioner must establish each of several eligibility requirements. The first issue raised by the acting director to be addressed in this proceeding is whether a qualifying job offer has been extended to the petitioner.

The petitioner has provided copies of his teacher employment contracts with the employing organization for the 1998-1999, 1999-2000, 2000-2001, and 2001-2002 school years. The acting director noted that the petitioner had not established that the job offer is permanent in nature, as the contracts are valid for only one year with no right to renewal.

On appeal, counsel asserts that each contract merely reflects the length of the contract and is in no way dispositive of the permanent nature of the position itself. Counsel states:

The permanent nature of the job offered should be considered in the context of the educational system. [The employing organization] has been operating as a Catholic High School in the Diocese of Victoria, Texas for *over 115 years*. . . . As an educational institution, [the employing organization] seeks to hire [the petitioner] as a full-time permanent religious teacher. The teacher position itself is a continuing position; [the employing organization] will always require a religious teacher to teach its student. The record is lacking any evidence that would indicate [the employing organization] would not need such a position. Its very mission (its purpose for existence) is to provide its students with a Catholic education.

On appeal, counsel provides excerpts from the Texas Educational Code (TEC) from the TEA. The TEC provides that an individual employed as a teacher by a school district for the first time, or who has not been employed by the district for two consecutive school years . . . shall be employed under a probationary contract. Further, it prohibits a probationary contract from exceeding one year. No right to renewal of a probationary contract exists. Once a teacher has been employed with a school district for a third or fourth year, the probationary contract may be converted into a continuing contract.

At the time of filing the petition in March 2001, the petitioner had already performed services for the employing organization under two one-year non-renewable contracts (for the 1998-1999 and 1999-2000 school years), and was into his third one-year non-renewable contract (for the 2000-2001 school year). At the time of filing the appeal in September 2002, the petitioner had completed a fourth one-year non-renewable contract (for the 2001-2002 school year), and had already started his fifth year of employment with the employing organization.

Counsel has not explained why, if the TEC provides that that an individual employed by a school district can have his or her probationary contract converted into a continuing contract in his or her third or fourth year of teaching, that the petitioner continues to perform services for the employing organization under one-year non-renewable contracts. This discrepancy in the petitioner's submissions has not been explained. It is concluded that the petitioner has not established that the job offer is permanent in nature. Therefore, the petitioner has not overcome the acting director's concerns on this issue and the petition must be denied.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The second issue raised by the acting director to be discussed in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical

workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. Citizenship and Immigration Services (CIS) interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

It is noted that the regulatory definition of religious occupation specifically includes "religious instructor." However, the job title alone is not, and cannot be, the determining factor in whether a position qualifies as a religious occupation. CIS must consider each petition on its individual merits

In a letter dated February 12, 2001, [REDACTED] states that the petitioner "has applied to teach at St. Joseph High School for 2001-2002" and that he "*will be partly responsible for the Catholic Education* of the students in the ninth to twelfth grades" [emphasis added]. In a letter dated July 18, 2002, Sister Eilers states:

We offered the religious teacher position to [the petitioner] because he is well qualified to teach our students in academics and the Catholic faith. [The petitioner] is required to provide instruction in a variety of teaching and learning programs, liturgical experiences, classes, religious retreats and study weeks, and other religious activities for faith development. [The petitioner] is required to coordinate all his religious activities within the school with the Parish and [REDACTED]. It is through such religious teachings that our school can continue to provide a community of faith that encourages the integration of Christian truths and values in the total development of its students.

Also, in a letter dated May 2, 2002, Sister Eilers states that the petitioner is employed at St. Joseph High School as a "high school teacher."

The acting director noted that the petitioner's educational credentials include training in various secular subjects. The acting director concluded that the duties of the position were secular in nature and, therefore, the petitioner had not established that it qualifies as a religious occupation.

On appeal, counsel argues that the proposed position specifically requires the integration of the teaching of Catholic theology and academics in order to abide by the educational ministry of the Catholic Church. Counsel also asserts that the acting director erroneously minimizes the petitioner's qualifications as insufficient to establish that he is qualified to engage in a religious vocation. Counsel concludes:

[The petitioner] has shown through ample evidence that the proffered position is a religious occupation requiring an individual trained in Catholic theology through an expansive education. The diversity of the student population is irrelevant in a Catholic school in the determination of the religious nature of the occupation. To make it relevant assumes that a Catholic education and

a diverse student body and/or the academic teaching of students are mutually exclusive. Yet, the Catholic Church specifically requires the integration of Catholic theology and beliefs with academics; reconciling one with the other.

Here, the record does not include a detailed description of the petitioner's duties and responsibilities in the proposed position. The record also does not include evidence of the specific standards and qualifications established by the employing organization for the proposed position, and how the petitioner has fulfilled those requirements. Furthermore, the petitioner has not provided a daily or weekly schedule of his activities to show how much time is spent in religious teaching as opposed to teaching secular subjects.

The petitioner's employing organization has stated that he is a "high school teacher," "partly responsible for Catholic education." Based on the evidence submitted, the AAO is unable to conclude that the proposed position qualifies as a religious occupation for purposes of special immigrant classification. For this reason, as well, the petition must be denied.

The third issue raised by the acting director to be discussed in this proceeding is whether the petitioner has established that the employing organization qualifies as a bona fide non-profit religious organization.

The regulation at 8 C.F.R. § 204.5(m) states, in pertinent part:

(3) Initial evidence. Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 *as it relates to religious organizations* [emphasis added] (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 *as it relates to religious organizations* [emphasis added]. . . .

To address this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated July 18, 1997, showing that the United States Catholic Conference was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). The letter states, in pertinent part:

In a ruling dated March 25, we held that the agencies and instrumentalities and all educational, charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in the Official Catholic Directory for 1946, are entitled to exemption from federal income tax under the provisions of section 101(6) of the Internal Revenue Code of 1939, which corresponds to section 501(c)(3) of the 1986 Code. This ruling has been updated annually to cover the activities added to or deleted from the Directory.

The petitioner has also submitted the Diocese of Victoria, Texas, Directory reflecting that the employing organization is a member of the Roman Catholic Diocese of Victoria; a certification from the United States Catholic Conference reflecting that the employing organization is a member of the Roman Catholic Church in the United States; and a page of the employing organization's by-laws.

Counsel asserts that the documentation submitted is sufficient to establish that the employing organization has been granted an exemption by the IRS "as it related to religious organizations."

This argument is not persuasive. Both the statute and the implementing regulation rely on the IRS determination of tax-exempt status in defining a qualifying religious organization. 8 C.F.R. 204.5(m)(3)(i)(A) and (B) rely on IRC section 501(c)(3), specifically "as it relates to religious organizations." There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. Only organizations classified, or classifiable, as a "church"² pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are considered as relating to religious organizations for the purpose of special immigrant religious worker classification.

As reflected on IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, and its accompanying schedule A attachment, there are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the IRC, and very specific criteria for tax exempt recognition as a "church" under 170(b)(1)(A)(i) of the IRC. While an organization classified under 170(b)(1)(A)(vi), for example, may be formed for religious purposes, it need not be. CIS interprets its own regulations that only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are qualifying religious organizations for the purpose of special immigrant religious worker classification. Furthermore, the employing organization's by-laws state that its purposes "is to support an educational undertaking. . . ." This does not support a claim that the employing organization is, in fact, organized and operated exclusively for religious purposes.

Based on the above discussion, it is concluded that the petitioner has not established that it is tax exempt as a religious organization pursuant to 8 C.F.R. 204.5(m)(3)(i)(A) or (B). For this reason as well, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence of the employing organization's ability to pay the petitioner the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of the prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more or more workers, the director may accept a statement from the financial officer of the organization that establishes the prospective

² The term "church" is the term used in Part III, #9 on IRS Form 1023.

employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The petitioner has not furnished the employing organization's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Furthermore, the petitioner has not submitted a statement from the financial officer of the employing organization indicating the number of its workers and attesting to its ability to pay the petitioner. Therefore, the petitioner has not satisfied the documentary requirements of 8 C.F.R. § 204.5(g)(2).

The petitioner has also not submitted sufficient evidence to establish that he is qualified to engage in a religious occupation. Since the appeal will be dismissed for the reasons discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.